

<p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF ARKANSAS 3 TEXARKANA DIVISION</p> <p>4 PLAINTIFF 5 CASE NO. 4:18-CV-04017-SOH</p> <p>6 V. 7 KIMBERLY HOFFMAN, et al. DEFENDANTS</p> <p>8 *****</p> <p>9 ORAL DEPOSITION 10 OF 11 LENORA PHILSON 12 MARCH 29, 2019 13 VOLUME 1</p> <p>14 *****</p> <p>15 ORAL DEPOSITION OF LENORA PHILSON, produced as a 16 witness at the instance of the PLAINTIFF, CRAIG SHIPP, 17 and duly sworn, was taken in the above-styled and 18 numbered cause on the 29th day of March, 2019, from 19 12:58 p.m. to 1:59 p.m., before LEICA TURNER, a 20 Certified Shorthand Reporter in and for the State of 21 Texas, reported by machine shorthand, at the offices of 22 Leigh &amp; Associates Court Reporting, 3930 Galleria Oaks 23 Drive, Suite 159, Texarkana, Texas, pursuant to the 24 Federal Rules of Civil Procedure and the provisions 25 stated on the record or attached hereto.</p>	<p>1 I N D E X</p> <p>2 WITNESS: LENORA PHILSON</p> <table border="0"> <thead> <tr> <th></th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>4 Appearances .....</td> <td style="text-align: right;">2</td> </tr> <tr> <td>5 Changes and Signature .....</td> <td style="text-align: right;">46</td> </tr> <tr> <td>6 Reporter's Certificates .....</td> <td style="text-align: right;">48</td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8 Examination by Mr. Franseen .....</td> <td style="text-align: right;">5</td> </tr> <tr> <td>9 Examination by Ms. Odum .....</td> <td style="text-align: right;">41</td> </tr> <tr> <td>10 Examination by Mr. Franseen .....</td> <td style="text-align: right;">44</td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </tbody> </table> <p>1 EXHIBIT INDEX</p> <p>2 EXHIBIT NO. DESCRIPTION</p> <table border="0"> <thead> <tr> <th></th> <th style="text-align: right;">PAGE</th> </tr> <tr> <th></th> <th style="text-align: right;">MARKED</th> </tr> </thead> <tbody> <tr> <td>3 1 .....</td> <td style="text-align: right;">18</td> </tr> <tr> <td>4 Email, 2/16/16, from Lenora Turner to 5 Stephen Arnold, Subj: Resident Craig 6 Shipp (Bates CCS-Requests Complaints 7 Other 0018)</td> <td></td> </tr> <tr> <td>8 2 .....</td> <td style="text-align: right;">18</td> </tr> <tr> <td>9 Medical Restrictions/Limitations/ 10 Special Authorization(s) 11 (Bates CCS 788)</td> <td></td> </tr> <tr> <td>12 3 .....</td> <td style="text-align: right;">29</td> </tr> <tr> <td>13 Email between Jeffrey Stieve and Lenora 14 Turner and Kim Hofmann Re: Resident 15 Craig Ship (Bates CCS-Requests 16 Complaints Other 0024 - 0025)</td> <td></td> </tr> <tr> <td>17 4 .....</td> <td style="text-align: right;">32</td> </tr> <tr> <td>18 Email String between Lenora Turner and 19 Stephen Arnold, 2/16/16, Re: Resident 20 Craig Shipp (Bates CCS-Requests 21 Complaints Other 0019)</td> <td></td> </tr> <tr> <td>22 5 .....</td> <td style="text-align: right;">44</td> </tr> <tr> <td>23 Request Form (Bates CCS-Requests 24 Complaints Other 0026)</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </tbody> </table>		PAGE	4 Appearances .....	2	5 Changes and Signature .....	46	6 Reporter's Certificates .....	48	7		8 Examination by Mr. Franseen .....	5	9 Examination by Ms. Odum .....	41	10 Examination by Mr. Franseen .....	44	11		12		13		14		15		16		17		18		19		20		21		22		23		24		25			PAGE		MARKED	3 1 .....	18	4 Email, 2/16/16, from Lenora Turner to 5 Stephen Arnold, Subj: Resident Craig 6 Shipp (Bates CCS-Requests Complaints 7 Other 0018)		8 2 .....	18	9 Medical Restrictions/Limitations/ 10 Special Authorization(s) 11 (Bates CCS 788)		12 3 .....	29	13 Email between Jeffrey Stieve and Lenora 14 Turner and Kim Hofmann Re: Resident 15 Craig Ship (Bates CCS-Requests 16 Complaints Other 0024 - 0025)		17 4 .....	32	18 Email String between Lenora Turner and 19 Stephen Arnold, 2/16/16, Re: Resident 20 Craig Shipp (Bates CCS-Requests 21 Complaints Other 0019)		22 5 .....	44	23 Request Form (Bates CCS-Requests 24 Complaints Other 0026)		25	
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<p style="text-align: right;">21</p> <p>1 Q. The warden says refer to Medical and says he 2 sent it to Medical and you received that document. What 3 are you supposed to do with that?</p> <p>4 A. Okay. That's a conversation I would have with 5 the warden.</p> <p>6 Q. Okay. What kind of conversation would you 7 have?</p> <p>8 A. Okay. First of all, I would have to look into 9 the record to see exactly what was going on as far as 10 the shoes and what the doctor had documented. So I know 11 that I would go in first of all and look at the record 12 and see exactly is there a medical necessity, what the 13 doctor had said about the shoes, about the foot, if the 14 documentation is there. And no matter what the 15 documentation says, I'm still going to follow back up 16 with the warden on that request because that's something 17 we did routinely is follow back up. Any time he gives 18 me something, there was always close follow-up.</p> <p>19 Q. How would you follow up?</p> <p>20 A. It all depends. I mean, sometimes I will talk 21 to him, I'd go to his office quite a bit, I would 22 e-mail, I would call, sometimes he would come to my 23 office.</p> <p>24 Q. So you would agree before February 16, 2016, 25 you had not notified Mr. Warden that Mr. Shipp needed</p>	<p style="text-align: right;">23</p> <p>1 A. Sounds pretty accurate.</p> <p>2 Q. Is there anything prohibiting a doctor from 3 filling out that type of form prior to an intake 4 physical if they have an encounter with the resident?</p> <p>5 A. I can't answer that. That would be up to the 6 physician.</p> <p>7 Q. Why is it up to the physician whether they can 8 fill out a form or not?</p> <p>9 A. That would be their discretion.</p> <p>10 Q. So it's at their discretion so there's nothing 11 prohibiting them from using their discretion in filling 12 out that form approving a device if it's brought to 13 their attention?</p> <p>14 A. I wouldn't think so.</p> <p>15 Q. You wouldn't want a policy in place that 16 prohibits them from using their discretion, would you?</p> <p>17 A. I don't make the policies.</p> <p>18 Q. But as an administrator there, you want to 19 have policies in place that are in the best interest of 20 the residents regarding their healthcare?</p> <p>21 A. Well, the policies are in place and that's 22 what we do, follow the policy.</p> <p>23 Q. So is there a policy that you're aware of that 24 prohibits a doctor from exercising their discretion in 25 filling out that form during an encounter once they're</p>
<p style="text-align: right;">22</p> <p>1 orthotic shoes?</p> <p>2 A. I'm not agreeing to that. I just said I can't 3 recall.</p> <p>4 Q. You don't have any memory of doing that?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall looking at Mr. Shipp's records 7 prior to February 16, 2016?</p> <p>8 A. Looking at his records?</p> <p>9 Q. To see whether he needed orthotic shoes, 10 whether they were approved or not?</p> <p>11 A. Prior to February 16th?</p> <p>12 Q. Yes.</p> <p>13 A. I don't remember, sorry.</p> <p>14 Q. On Exhibit 2 there, is that the document that 15 would be filled out by a doctor approving a medical 16 device?</p> <p>17 A. It appears to be.</p> <p>18 Q. So that would have to be filled out by a 19 doctor in order for a medical device to be approved to 20 come into the facility by Medical and the warden?</p> <p>21 A. It looks like that is one form.</p> <p>22 Q. And so in order for a resident to get their 23 medical prescribed device, that document had to be 24 filled out, you would have to be notified, and the 25 warden would have to approve it?</p>	<p style="text-align: right;">24</p> <p>1 aware that a resident does not have their medically 2 prescribed device?</p> <p>3 A. I'm not aware of any policies.</p> <p>4 Q. Do you agree that a nurse can't notify you 5 that a resident needs a outside medical device without a 6 doctor filling out such an order?</p> <p>7 A. Can you repeat that question?</p> <p>8 Q. Is there anything regarding the policies and 9 procedures that prohibits a nurse from notifying you 10 that a resident needs an outside medically prescribed 11 device without a doctor's order?</p> <p>12 A. I don't recall anything in the policy about 13 that.</p> <p>14 Q. Do you know whether the nursing staff follows 15 such a policy in February 2016 in that manner?</p> <p>16 A. Follows such a policy about what? I'm sorry.</p> <p>17 Q. About not notifying the health service 18 administrator until the doctor fills out an order.</p> <p>19 A. Your question was is there anything in the 20 policy?</p> <p>21 Q. Do you know whether the nursing staff would 22 have followed that policy, that they would wait until a 23 doctor filled out an order before they notified the HSA 24 regarding the need for an outside device to be 25 approved?</p>

41

1 I'm not -- I would have to say no. I'm not critical  
 2 about any of the care. I would have to say no to that.  
 3 I'm not critical of any of it.

4 MR. FRANSEEN: I'll pass the witness.

5 MS. ODUM: I just have a couple of  
 6 questions.

## EXAMINATION

7 BY MS. ODUM:

8 Q. I'm not sure if you understood something he  
 10 was asking you and I want to make sure we verify it.

11 A. Okay.

12 Q. When he was asking you questions about  
 13 requests that come down, I think he was intending the  
 14 inmate request form.

15 A. Okay.

16 Q. So do you remember receiving any inmate  
 17 request forms either from Mr. Shipp or from Warden  
 18 Arnold?

19 A. Yes.

20 Q. Or did you see any?

21 A. Yes, I did.

22 Q. Okay. Now, I'm trying to remember his  
 23 questions. Do you remember the warden forwarding any  
 24 requests to you?

25 A. Yes.

1 get the resident request back. The policy doesn't state  
 2 a specific amount of time. But I set it my goal to get  
 3 it back to them just as soon as -- you know, within a  
 4 reasonable amount of time. I always try to answer mine  
 5 within at least about a week, just depending on how many  
 6 I get in, within a few days to a week, just, like I  
 7 said, just depending on how many I have.

8 Q. Okay. So if you receive one, you respond to  
 9 it and you sign it?

10 A. I do.

11 Q. Okay. All right. I just felt like there was  
 12 some confusion.

13 A. Yes.

14 Q. And I think he was talking about the form and  
 15 so I wanted to cover that.

16 A. I'm glad you clarified it because I didn't  
 17 understand.

18 Q. Okay. Now, do you have anything to do with  
 19 inmates making phone calls?

20 A. No, ma'am.

21 Q. Do you have anything to do with processing  
 22 incoming mail?

23 A. No.

24 MS. ODUM: That's all.

## EXAMINATION

42

1 Q. Okay. Do you remember when the first time was  
 2 that you received an inmate request from your review of  
 3 the records?

4 A. I believe the first date was on 2/12. I  
 5 received one that was scratched through from Warden  
 6 Arnold and it was sent to me.

7 Q. Okay. And did you -- is that the one that you  
 8 received on the 15th?

9 A. Yes.

10 Q. Okay. Now, is it your -- what is your normal  
 11 routine if you receive an inmate request form that's  
 12 completed by an inmate?

13 A. Then I would go ahead and address that. I go  
 14 ahead and address whatever the concern is, you know, I  
 15 just address that, whether it's in the form of -- I  
 16 mean, if it's something that I can just go ahead and  
 17 answer, sometimes I'll call the resident up to my office  
 18 and address it. If it's -- you know, it just depends on  
 19 what the concern is and, you know, I'll just go ahead  
 20 and I'll copy it and then go ahead and send it back to  
 21 that resident. And that's what the normal procedure is,  
 22 you just address it and get it back to them.

23 Q. So if you receive a request --

24 A. No, I was just saying -- as far as the policy  
 25 for resident requests, there's no set amount of time to

1 BY MR. FRANSEEN:  
 2 Q. So the warden received a request from an  
 3 inmate before the one that you said you received on the  
 4 15th?

5 A. I can't be so sure of the date unless I saw  
 6 it. Could I see it?

7 MS. ODUM: The one we were just talking  
 8 about.

9 A. Yes, yes.

10 (Exhibit No. 5 marked)

11 Q. I'll mark this as Exhibit 5, CCS-Requests  
 12 Complaints Other 0026. I'm not sure if this is the one  
 13 you were talking about because you weren't sure. You  
 14 were sure when you answered her questions.

15 MS. ODUM: I didn't bring one. I'm  
 16 sorry.

17 A. That's okay. It is the one time I'm talking  
 18 about.

19 Q. So if there was one prior to this, you weren't  
 20 shown it?

21 A. I'm sorry, if there was one prior -- what did  
 22 you say?

23 Q. If there was a request sent to the warden  
 24 prior to this one, you weren't shown it?

25 A. I wasn't showing it?

11 (Pages 41 to 44)